IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10512 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA SECRETARY & 1 - Petitioner(s)
Versus
YOGESH OCHHAVALAL SHAH - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1 - 2.
MR SI NANAVATI with MR BIREN A VAISHNAV for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 03/07/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

Rule. Mr Biren A Vaishnav, learned advocate waives service of Rule for the respondent.

2. The petitioners – Union of India, Commissioner of Central Excise and Director General (Vigilance), Customs & Central Excise,

have filed this petition under Article 226 of the Constitution of India challenging the order passed by the Central Administrative Tribunal, Ahmedabad in Original Application No. 101 of 2006, whereby the note of disagreement dated 14.2.2006 issued by the disciplinary authority was quashed and set aside.

3. In nutshell, the case of the petitioners is that the respondent herein, while working as a Superintendent of Customs Division, Paldi, Ahmedabad, was in charge of the Customs godown for the period from 22.6.1998 to 30.10.1998 and custodian of the valuables besides other charges. While taking over the charge of the valuables from one Mr SB Chauhan, the then in-charge Superintendent, the respondent had physically verified all the valuable and all the items were tallied with the list of valuables in presence of one Mr JG Malek, Inspector. The respondent handed over the charge of valuables to one Mr KM Pathan, Superintendent and it was noticed that at the time of transfer of charge of valuables, seven gold biscuits of 10 tolas each were missing and not traceable. Thereafter, an inquiry was conducted and the seven gold biscuits of total 10 tolas each were recovered/retrieved from one Mr Harshad Makwana, a daily wager/farash.

On 7.10.1998, Mr Rajubhai Jagyasi and Mr Kanaiyalal Navlani, both of Vadodara submitted a written complaint to the Chief Commissioner of Central Excise and Customs, Vadodara that on 5.9.1998, the respondent herein alongwith Mr JG Malek, Inspector, Mr SB Sadhu and Mr GD Maheria, both sepoys had unauthorisedly visited the business premises of M/s Ashiana Gift Shop and M/s Maruti Gift Shop, both at Vadodara and carried out the operation in the presence of shop keepers which was purportedly a search without any search authorization. These officers had threatened the shop keepers and created an atmosphere of terror. These officers had taken away certain items

wroth Rs.33,800/- from M/s Ashiana Gift Shop and items worth Rs.13,000/- from M/s Maruti Gift Shop without drawing any panchnama. It was also alleged that the respondent demanded Rs.25,000/- from both the shop keepers. Since the amount was not readily available, the amount was agreed to be delivered afterwards.

Pursuant to the said complaint, charge-sheet was issued to the respondent on 30.4.2002. A reply was given to the charge-sheet by the respondent and after considering the evidence and the submissions made on behalf of the respondent, the Inquiry Officer has held that the charges levelled against the respondent were not proved. He has found that the charges levelled against the respondent were not substantiated by the evidence led by the Presenting Officer before him. Consequent to the aforesaid findings with which the disciplinary authority agreed, second stage advice was sought from the Central Vigilance Commission. Despite the fact that the disciplinary authority was in agreement with the findings recorded by the Inquiry Officer and was also of the prima facie veiw that the respondent was required to be exonerated, on the basis of the recommendation made by the Central Vigilance Commission, the note for disagreement was issued by the disciplinary authority on 14.2.2006 and the same was under challenge before the Central Administrative Tribunal. While dealing with the said issue regarding note for disagreement, the Central Administrative Tribunal held that this was a fit case to be interfered with as the disciplinary authority has issued the disagreement note only on the dictates of the Central Vigilance Commission and without coming to an independent finding. The Tribunal has, therefore, quashed and set aside the said note for disagreement.

It is this order of the Central Administrative Tribunal which is under challenge before this Court in the present petition.

4. Heard Mr Harin Raval, learned Assistant Solicitor General appearing for the petitioners and Mr SI Nanavati, learned senior counsel with Mr Biren Vaishnav for the respondent.

5. The main argument of Mr Raval is that the Central Administrative Tribunal has entertained the application which is premature as no final order against the respondent is passed and it is only at the stage of note for disagreement. The Central Administrative Tribunal should not have entertained such application and the respondent should have been directed to appear before the disciplinary authority by submitting his reply. He has, therefore, submitted that the impugned order passed by the Central Administrative Tribunal deserves to be quashed and set aside.

6. Mr SI Nanavati, learned senior counsel for the respondent, on the other hand, while supporting the order passed by the Central Administrative Tribunal has submitted that the Inquiry Officer and the disciplinary authority found no substance in the charges levelled against the respondent and it is only at the behest of the Central Vigilance Commission, the note for disagreement was issued against the respondent. He has, therefore, submitted that this is contrary to the settled principles of law and against the judgment of the Hon'ble Supreme Court in the case of Nagaraj Shivarao Karjagi vs. Syndicate Bank Head Office, Manipal, AIR 1991 SC 1507. On the basis of this judgment, he has submitted that no interference is called for in the order of the Tribunal and the petition deserves to be dismissed.

7. Having heard the learned counsels appearing for the respective parties and having considering the facts of the case as well as the judgment cited before the Court, we are of the view that

no final order is yet passed against the respondent. It is only the note for disagreement issued by the Commissioner which was challenged before the Central Administrative Tribunal. While entertaining the application challenging the note for disagreement, the Central Administrative Tribunal has quashed and set aside the same and thereby put an end to the proceedings.

8. Even in the case relied upon by Mr Nanavati, the order under challenge was the final order whereby the major punishment was imposed and while interfering with the said order, the Hon'ble Supreme Court has quashed and set aside the said orders of the disciplinary authority and the appellate authority with a directions to the disciplinary authority to dispose of the petitioner's case in accordance with law and in the light of the observations made therein. We are, therefore, of the view that the application moved by the respondent was premature and by issuing the note for disagreement, only an explanation was called for and no final order was passed against the respondent.

9. In the above view of the matter, we hereby quash and set aside the impugned order passed by the Central Administrative Tribunal with a direction to the respondent to give response to the note for disagreement issued by the disciplinary authority. On submitting reply by the respondent herein and after considering the said reply and after affording an opportunity of being heard to the respondent, appropriate decision must be taken by the disciplinary authority. It is also made clear that while considering the reply as well as the submissions made and the explanation offered by the respondent, the disciplinary authority should not be influenced by the recommendations made by the Central Vigilance Commission and the matter shall be decided by him independently and on its own merits and on the basis of the evidence led before him. It is also made clear that if any adverse order is made against the

respondent, the same shall not be implemented for a period of two weeks from the date of communication of such order to the respondent. During this period, it is open for the respondent to challenge such order before the Tribunal praying for stay against the operation and implementation of such order. Since the matter is of 1998, it is expected that the disciplinary authority may decide the same as expeditiously as possible.

10. Subject to the aforesaid directions and observations, this petition is allowed and Rule is made absolute to the aforesaid extent with no order as to costs.

[M.S. SHAH, J.]

[K.A. PUJ, J.]

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